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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91160266
Party	Plaintiff Mr. Christopher Brooks Mr. Christopher Brooks 83 Myrtle Boulevard Larchmont, NY 10538 UNITED STATES
Correspondence Address	Evan Gourvitz Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES egourvitz@frosszelnick.com
Submission	REPLY DECLARATION OF EVAN GOURVITZ IN SUPPORT OF OPPOSERÂ'S MOTION FOR SUMMARY JUDGMENT with Exhibits 17 -25
Filer's Name	Evan Gourvitz, Esq.
Filer's e-mail	egourvitz@frosszelnick.com
Signature	/Evan Gourvitz, Esq/
Date	07/21/2005
Attachments	91160266 Gourvitz Reply Declaration.pdf (68 pages)

In the Matter of Application Serial No. 75/761,159
Mark: CAB CALLOWAY
Opposer's Ref: CWBK 04/18950

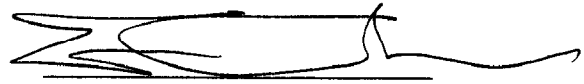
**REPLY DECLARATION OF EVAN GOURVITZ IN
SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

3. Attached hereto as Exhibit 18 is a true and correct copy of an excerpt from a printout from the U.S. Census website at <<http://www.census.gov/genealogy/names/dist.all.last>> showing the frequency of the last name Calloway in the 1990 U.S. Census.

4. Attached hereto as Exhibit 19 is a true and correct copy of a printout from the U.S. Census website at <<http://www.census.gov/genalogy/names/dist.male.first>> showing the frequency of the 1,219 most popular male first names in the 1990 U.S. Census.
5. Attached hereto as Exhibit 20 is a true and correct copy of excerpts from the May 19, 2001 deposition of Applicant's manager Cabella Calloway Langsam in the prior litigation between the parties, *Creative Arts by Calloway, LLC v. Brooks*, 01 Civ. 3192 (S.D.N.Y.), *aff'd*, 2002 WL 31303241 (2d Cir. Oct. 11, 2002) (the "Prior Action"). While this deposition initially was marked as confidential, Applicant's counsel later confirmed in a May 30, 2001 letter to Opposer's counsel that Applicant did not designate any part of the deposition as confidential.
6. Attached hereto as Exhibit 21 is a true and correct copy of an excerpt from the June 7, 2001 declaration of Applicant's officer Cabella Calloway Langsam in the Prior Action.
7. Attached hereto as Exhibit 22 is a true and correct copy of an excerpt from Applicant's June 8, 2001 Rule 56.1 Statement of Material Facts as to Which There Exists a Genuine Issue to Be Tried in the Prior Action.
8. Attached hereto as Exhibit 23 is a true and correct copy of the June 14, 2001 Declaration of Gear Ink. New Orleans owner Bob Bass in the Prior Action.
9. Attached hereto as Exhibit 24 is a true and correct copy of excerpts from Applicant's June 8, 2001 Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment and in Reply to Defendant's Opposition to Plaintiff's Application for Preliminary Injunction in the Prior Action.
10. Attached hereto as Exhibit 25 is a true and correct copy of an excerpt from Applicant's June 12, 2002 Reply Brief on appeal in the Prior Action.

I declare under penalty of perjury that the foregoing is true.

Executed this 21st day of July, 2005



Evan Gourvitz




I:\egourvitz\CWBK\050720-0418950-gourvitz-decl.doc

Exhibit 17

U.S. Census Bureau

Name Files

NOTE: No specific individual information is given.

Name	Last modified	Size
 <u>dist.all.last</u>	09-May-95 23:19	2M
 <u>dist.female.first</u>	29-Sep-94 12:23	146K
 <u>dist.male.first</u>	29-Sep-94 12:23	41K

Each of the three files, (dist.all.last), (dist. male.first), and (dist female.first) contain four items of data. The four items are:

1. A "Name"
2. Frequency in percent
3. Cumulative Frequency in percent
4. Rank

In the file (dist.all.last) one entry appears as:

MOORE	0.312	5.312	9
-------	-------	-------	---

In our Search Area sample, MOORE ranks 9th in terms of frequency. 5.312 percent of the sample population is covered by MOORE and the 8 names occurring more frequently than MOORE. The surname, MOORE, is possessed by 0.312 percent of our population sample.

Detailed Methodology

Variables in Names Files:

name
freq = Frequency in percent
cum.freq = Cumulative Frequency in percent
rank

First ten entries in dist.all.last

name	freq	cum.freq	rank
SMITH	1.006	1.006	1
JOHNSON	0.810	1.816	2
WILLIAMS	0.699	2.515	3
JONES	0.621	3.136	4
BROWN	0.621	3.757	5
DAVIS	0.480	4.237	6
MILLER	0.424	4.660	7
WILSON	0.339	5.000	8
MOORE	0.312	5.312	9
TAYLOR	0.311	5.623	10

First ten entries in dist.female.first

name	freq	cum.freq	rank
MARY	2.629	2.629	1
PATRICIA	1.073	3.702	2
LINDA	1.035	4.736	3
BARBARA	0.980	5.716	4
ELIZABETH	0.937	6.653	5
JENNIFER	0.932	7.586	6
MARIA	0.828	8.414	7
SUSAN	0.794	9.209	8
MARGARET	0.768	9.976	9
DOROTHY	0.727	10.703	10

First ten entries in dist.male.first

name	freq	cum.freq	rank
JAMES	3.318	3.318	1
JOHN	3.271	6.589	2
ROBERT	3.143	9.732	3
MICHAEL	2.629	12.361	4
WILLIAM	2.451	14.812	5
DAVID	2.363	17.176	6
RICHARD	1.703	18.878	7
CHARLES	1.523	20.401	8
JOSEPH	1.404	21.805	9
THOMAS	1.380	23.185	10

Source: U.S. Census Bureau, Population Division,

Population Analysis & Evaluation Staff

Maintained By: Information & Research Services

Internet Staff (Population Division)

Last Revised: March 17, 2005 at 11:12:14 AM

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USCENSUSBUREAU

Helping You Make Informed Decisions

10/95

DOCUMENTATION AND METHODOLOGY FOR FREQUENTLY OCCURRING NAMES IN THE U.S.--1990

The Census Bureau has a primary obligation to protect the confidentiality of individual responses to the Census. As part of this confidentiality commitment, the Census Bureau does not currently release individual census questionnaires (or any other information that could identify an individual) until 72 years after a Decennial Census was taken. In 1992, the Census Bureau released the 1920 Census schedules to National Archives. In fact, the Census Bureau is so concerned about confidentiality that name has not been entered into the basic internal electronic data used to tabulate census results.

However, there have been numerous demands for summary data on the frequency of surnames for genealogical reasons. Similar interest has arisen for the frequency of first names by sex. This data set attempts to satisfy these demands while still providing utmost confidentiality of individual results.

BACKGROUND

In the summer of 1990, immediately following the 1990 Decennial Census, the United States Census Bureau conducted a large scale survey to measure undercount in the 1990 Census. This independent post Census operation (the 1990 Post-Enumeration Survey--PES) collected items of demographic data (race, sex, age and NAME) from 377,000 persons living in 165,000 housing units in 5,300 predefined blocks (or block clusters).

The information acquired from this independent (PES) operation was matched against actual 1990 Census records for persons living in those same 5300 blocks plus additional surrounding ring blocks. The PES blocks plus the surrounding ring--"the Search Area"--contained 7.2 million census records replete with name. It is this Search Area data set that provides the impetus for the three name files at this internet site.

FILE FORMATS

In July 1995, the Census Bureau placed abridged summary information from the Search Area on its internet site. Selected data from these files have appeared in the print media with the citation "source--Census Bureau". Since the documentation accompanying the original release of this information was sketchy, we are supplying additional explanatory material about the limitations of these data.

Each of the three files, (dist.all.last), (dist. male.first), and (dist female.first) contain four items of data. The four items are:

- (1). A "Name"
- (2). Frequency in percent
- (3). Cumulative Frequency in percent
- (4). Rank

In the file (dist.all.last) one entry appears as:

MOORE	0.312	5.312	9
-------	-------	-------	---

In our Search Area sample, MOORE ranks 9th in terms of frequency. 5.312 percent of the sample population is covered by MOORE and

the 8 names occurring more frequently than MOORE. The surname, MOORE, is possessed by 0.312 percent of our population sample.

EDITING

Producing that summary line for the name MOORE required a great deal of program editing. For example, we immediately realized that it was necessary to convert the entries MOORE JR, MOORE SR, and MOORE III in the last name field to MOORE. For purposes of consistency we also converted entries such as MOORE JONES or MOORE-JONES to MOORE.

In addition to those rather simplistic edits, we also examined each name entry for the possibility of an inversion. (eg: a first name appearing in the last name field and a last name placed in the first name area). Consider a 2 person household with the entries MOORE ROBERT, and MOORE CAROLYN in the name fields. From our sample name universe, we can empirically determine the probability that the inversion (ROBERT MOORE and CAROLYN MOORE) as a far greater probability of being "right" than the keyed entry. When the probability that the odds of an inversion attained odds of 10,000 to 1, the inversion was done.

Many names can be inverted and sound absolutely right. For example, there is absolutely no reason to suspect that HENRY THOMAS is wrong and THOMAS HENRY is preferable. However, if HENRY THOMAS had a spouse listed as HENRY MARTHA and a female child named HENRY SUSAN, that additional information suffices to invert the name field for the entire family.

For first names, we considered concatenating entries but finally decided against it. Among males the combinations JOHN PAUL and JOSE LUIS in the first name field were far more frequent than any other set of spaced names. We could possibly have formed them as JOHNPAUL and JOSELUIS. As a result the male first names JOHN and JOSE may be marginally overstated.

The one name that is most affected by our decision not to concatenate is the grand old name of MARY. The entries (MARY ANN, MARY BETH, MARY CATHERINE, MARY ELLEN, MARY FRANCES, MARY GRACE etc) wind up as MARY. MARY may or may be the most common first name among American women, but our decision to avoid concatenation did add a significant number of MARY's.

Finally, we came to the conclusion that the existence of a single letter (an initial perhaps?) appearing in either the first or last name field would not qualify as a name; but an initial in one field would not disqualify the other name field. For example the 19th century financier (J P MORGAN) has a valid last name but the letter J does not meet these standards for a first name. MUHAMMED X is an example of a acceptable first name with an unusable surname.

MISSING DATA

Although the search area contains 7.2 million persons, almost 15 percent of those persons do not provide enough information to form a name. In the previous paragraph we provided the situation where we decided that a single letter would not constitute a name. Other situation are listed below.

1. The respondents did not enter a "name" at the top of page 2 of the 1990 Census form, even though names might have appeared on the roster of page 1. A name must appear at the top of page 2

for the name to be keyed.

2. The respondent may have inadvertently left sex (gender) off his or her Census record. In that instance we accept the last name, but we have no "certain" way of placing the first name in the male or the female file. We do not assume that JENNIFER without a sex designator would be female even though common sense suggests that this is indeed the case.

3. A family may have put down a last name for the householder but not for any other household member. We may have the following family JOHN SMITH, MARY (blank), JOHN JR (blank), ROBERT (blank), JENNIFER (blank), SUSAN (blank). In that family we have a first and last name for householder John, but first names only for the remaining 5 family members.

4. The keyed name may not follow acceptable form. Some examples of invalid entries in either the first or last name field are: BABY GIRL, MR JONES, DR BROWN, FILIPINO FEMALE.

Each of these situations are responsible for limiting our original sample of 7.2 million person records down to its present size of 6.3 million. The actual number of person records making up the unabridged files are:

File Name	Valid Records	Unique Names
1. dist.all.last	6,290,251	88,799
2. dist.female.first	3,184,399	4,275
3. dist.male.first.	3,003,954	1,219

For purposes of both confidentiality and elimination of data noise we restricted the number of unique names available at this internet site to the minimum number of entries that contain 90 percent of the population in that data file. There is an extremely small chance that an individual with a truly "unique" name could have been captured in sample, and is far more likely for surnames than for first names. A second basis for limiting entries is that a smattering of entries exist because of the combination of bad handwriting coupled with poor typing. Consider the entry JOSEHP in dist.male.first. Although JOSEHP may be a name, it is much more likely that all of the JOSEHP entries are really miskeys of JOSEPH.

LIMITATIONS

For the names at the top of the distribution, (SMITH, JOHNSON, WILLIAMS, JONES etc), or (MARY, PATRICIA, LINDA, BARBARA etc) or (JAMES, JOHN, ROBERT, MICHAEL etc) the data speaks for themselves. However as the sample thins, one might draw conclusions about frequency that are not warranted.

The PES sample intentionally over sampled both Blacks and Hispanics, and it is likely that the Search Area also contains an excess of these two groups. Thus the frequently occurring surnames: GARCIA, RODRIGUEZ, GOMEZ and WASHINGTON as well as first names: JUAN, JOSE, GUADALUPE and WILLIE might attain higher rankings than their actual population numbers within the United States would warrant.

But the limitations due to sampling are much more noticeable when looking at rarely occurring names--especially surnames. Consider a surname appearing 63 (out of 6.3 million entries) times in the file dist.all.last. Here the frequency would appear as 0.001

percent, but it is possible that that sample frequency may not be close to "truth".

Ignoring clustering, (persons in the same household usually have the same surname) the coefficient of variation on a number of that magnitude would be approximately 12 percent. But most people who do not live alone share a last name with other people in that household. Thus the 63 persons with that rare name may be the result of 16 households, which would raise the coefficient of variation to approximately 25 percent.

But we are not done. Even in the last years of the 20th century, families tend to live close to each other, and it is not impossible to conceive a situation where all Americans with a certain surname appear in sample. Were that situation to occur it would be possible to overstate the frequency of that surname name by a factor of 40. The number 40 arises because the number of Census records in the sample (6,290,251) is approximately one fortieth of the United States population.

The fact that a name doesn't appear in these three files does not mean that it is non existent, only that it is reasonably rare.

In conclusion we do realize that misleading frequencies are much less likely in the files (dist.female first) and (dist.male.first). Although fathers and one son may share a first name, brothers almost never share the same first name.

ADDITIONAL INFORMATION

Persons wanting or needing more information about the contents of these three files can contact David L. Word (dword@census.gov) 301-457-2103 or Randy M. Klear (rklear@census.gov) 301-457-1727.

Exhibit 18

CAILOWAY	0.008	49.452	1638
BEAL	0.008	49.459	1639
BAUTISTA	0.008	49.467	1640
WINN	0.008	49.474	1641
SUGGS	0.008	49.482	1642
STERN	0.008	49.490	1643
STAPLETON	0.008	49.497	1644
LYLES	0.008	49.505	1645
LAIRD	0.008	49.512	1646
MONTANO	0.008	49.520	1647
DIAMOND	0.008	49.527	1648
DAWKINS	0.008	49.535	1649
ROLAND	0.008	49.543	1650
HAGAN	0.008	49.550	1651
GOLDMAN	0.008	49.558	1652
BRYSON	0.008	49.565	1653
BARAJAS	0.008	49.573	1654
LOVETT	0.008	49.580	1655
SEGURA	0.008	49.588	1656
METZ	0.008	49.595	1657
LOCKETT	0.008	49.603	1658
LANGFORD	0.008	49.610	1659
HINSON	0.008	49.618	1660
EASTMAN	0.008	49.625	1661
ROCK	0.008	49.633	1662
HOOKS	0.008	49.640	1663
WOODY	0.007	49.648	1664
SMALLWOOD	0.007	49.655	1665
SHAPIRO	0.007	49.663	1666
CROWELL	0.007	49.670	1667
WHALEN	0.007	49.678	1668
TRIPLETT	0.007	49.685	1669
HOOKER	0.007	49.693	1670
CHATMAN	0.007	49.700	1671
ALDRICH	0.007	49.708	1672
CAHILL	0.007	49.715	1673
YOUNGBLOOD	0.007	49.723	1674
YBARRA	0.007	49.730	1675
STALLINGS	0.007	49.738	1676
SHEETS	0.007	49.745	1677
SAMUEL	0.007	49.752	1678
REEDER	0.007	49.760	1679
PERSON	0.007	49.767	1680
PACK	0.007	49.775	1681
LACEY	0.007	49.782	1682
CONNELLY	0.007	49.790	1683
BATEMAN	0.007	49.797	1684
ABERNATHY	0.007	49.804	1685
WINKLER	0.007	49.812	1686
WILKES	0.007	49.819	1687
MASTERS	0.007	49.827	1688
HACKETT	0.007	49.834	1689
GRANGER	0.007	49.841	1690
GILLIS	0.007	49.849	1691
SCHMITZ	0.007	49.856	1692
SAPP	0.007	49.863	1693
NAPIER	0.007	49.871	1694
SOUZA	0.007	49.878	1695
LANIER	0.007	49.886	1696
GOMES	0.007	49.893	1697

Exhibit 19

JAMES	3.318	3.318	1
JOHN	3.271	6.589	2
ROBERT	3.143	9.732	3
MICHAEL	2.629	12.361	4
WILLIAM	2.451	14.812	5
DAVID	2.363	17.176	6
RICHARD	1.703	18.878	7
CHARLES	1.523	20.401	8
JOSEPH	1.404	21.805	9
THOMAS	1.380	23.185	10
CHRISTOPHER	1.035	24.220	11
DANIEL	0.974	25.194	12
PAUL	0.948	26.142	13
MARK	0.938	27.081	14
DONALD	0.931	28.012	15
GEORGE	0.927	28.939	16
KENNETH	0.826	29.766	17
STEVEN	0.780	30.546	18
EDWARD	0.779	31.325	19
BRIAN	0.736	32.061	20
RONALD	0.725	32.787	21
ANTHONY	0.721	33.508	22
KEVIN	0.671	34.179	23
JASON	0.660	34.839	24
MATTHEW	0.657	35.496	25
GARY	0.650	36.147	26
TIMOTHY	0.640	36.786	27
JOSE	0.613	37.399	28
LARRY	0.598	37.997	29
JEFFREY	0.591	38.588	30
FRANK	0.581	39.169	31
SCOTT	0.546	39.715	32
ERIC	0.544	40.259	33
STEPHEN	0.540	40.799	34
ANDREW	0.537	41.335	35
RAYMOND	0.488	41.824	36
GREGORY	0.441	42.265	37
JOSHUA	0.435	42.700	38
JERRY	0.432	43.132	39
DENNIS	0.415	43.547	40
WALTER	0.399	43.946	41
PATRICK	0.389	44.335	42
PETER	0.381	44.716	43
HAROLD	0.371	45.087	44
DOUGLAS	0.367	45.454	45
HENRY	0.365	45.819	46
CARL	0.346	46.165	47
ARTHUR	0.335	46.500	48
RYAN	0.328	46.828	49
ROGER	0.322	47.150	50
JOE	0.321	47.471	51
JUAN	0.316	47.786	52
JACK	0.315	48.102	53
ALBERT	0.314	48.415	54
JONATHAN	0.313	48.729	55
JUSTIN	0.311	49.040	56
TERRY	0.311	49.351	57
GERALD	0.309	49.660	58
KEITH	0.308	49.968	59
SAMUEL	0.306	50.274	60

WILLIE	0.302	50.576	61
RALPH	0.282	50.859	62
LAWRENCE	0.282	51.141	63
NICHOLAS	0.275	51.415	64
ROY	0.273	51.688	65
BENJAMIN	0.270	51.958	66
BRUCE	0.263	52.221	67
BRANDON	0.260	52.480	68
ADAM	0.259	52.740	69
HARRY	0.251	52.991	70
FRED	0.251	53.241	71
WAYNE	0.249	53.490	72
BILLY	0.248	53.738	73
STEVE	0.246	53.984	74
LOUIS	0.243	54.227	75
JEREMY	0.242	54.469	76
AARON	0.240	54.710	77
RANDY	0.232	54.942	78
HOWARD	0.230	55.172	79
EUGENE	0.230	55.402	80
CARLOS	0.229	55.630	81
RUSSELL	0.224	55.854	82
BOBBY	0.223	56.077	83
VICTOR	0.222	56.299	84
MARTIN	0.216	56.515	85
ERNEST	0.215	56.730	86
PHILLIP	0.213	56.942	87
TODD	0.213	57.155	88
JESSE	0.209	57.364	89
CRAIG	0.206	57.570	90
ALAN	0.204	57.774	91
SHAWN	0.200	57.973	92
CLARENCE	0.197	58.170	93
SEAN	0.197	58.368	94
PHILIP	0.197	58.565	95
CHRIS	0.197	58.761	96
JOHNNY	0.195	58.957	97
EARL	0.193	59.149	98
JIMMY	0.191	59.340	99
ANTONIO	0.190	59.531	100
DANNY	0.190	59.720	101
BRYAN	0.190	59.910	102
TONY	0.190	60.100	103
LUIS	0.189	60.289	104
MIKE	0.189	60.478	105
STANLEY	0.186	60.665	106
LEONARD	0.186	60.850	107
NATHAN	0.185	61.035	108
DALE	0.184	61.219	109
MANUEL	0.181	61.400	110
RODNEY	0.180	61.581	111
CURTIS	0.180	61.761	112
NORMAN	0.177	61.938	113
ALLEN	0.174	62.112	114
MARVIN	0.171	62.283	115
VINCENT	0.168	62.450	116
GLENN	0.167	62.617	117
JEFFERY	0.166	62.783	118
TRAVIS	0.166	62.949	119
JEFF	0.166	63.114	120

CHAD	0.165	63.279	121
JACOB	0.165	63.444	122
LEE	0.162	63.606	123
MELVIN	0.162	63.768	124
ALFRED	0.162	63.930	125
KYLE	0.160	64.090	126
FRANCIS	0.160	64.250	127
BRADLEY	0.159	64.409	128
JESUS	0.155	64.564	129
HERBERT	0.155	64.719	130
FREDERICK	0.154	64.873	131
RAY	0.153	65.026	132
JOEL	0.152	65.177	133
EDWIN	0.148	65.326	134
DON	0.145	65.471	135
EDDIE	0.144	65.615	136
RICKY	0.141	65.756	137
TROY	0.138	65.895	138
RANDALL	0.138	66.032	139
BARRY	0.134	66.167	140
ALEXANDER	0.132	66.299	141
BERNARD	0.127	66.427	142
MARIO	0.125	66.552	143
LEROY	0.125	66.676	144
FRANCISCO	0.124	66.801	145
MARCUS	0.124	66.925	146
MICHEAL	0.123	67.048	147
THEODORE	0.123	67.171	148
CLIFFORD	0.123	67.293	149
MIGUEL	0.122	67.415	150
OSCAR	0.122	67.538	151
JAY	0.118	67.656	152
JIM	0.118	67.773	153
TOM	0.117	67.890	154
CALVIN	0.115	68.006	155
ALEX	0.115	68.120	156
JON	0.115	68.235	157
RONNIE	0.113	68.348	158
BILL	0.112	68.461	159
LLOYD	0.112	68.573	160
TOMMY	0.112	68.685	161
LEON	0.112	68.797	162
DEREK	0.112	68.908	163
WARREN	0.110	69.018	164
DARRELL	0.108	69.126	165
JEROME	0.108	69.234	166
FLOYD	0.107	69.340	167
LEO	0.106	69.446	168
ALVIN	0.105	69.551	169
TIM	0.104	69.656	170
WESLEY	0.104	69.760	171
GORDON	0.104	69.864	172
DEAN	0.104	69.968	173
GREG	0.104	70.071	174
JORGE	0.104	70.175	175
DUSTIN	0.103	70.278	176
PEDRO	0.103	70.381	177
DERRICK	0.103	70.484	178
DAN	0.101	70.585	179
LEWIS	0.099	70.684	180

ZACHARY	0.099	70.782	181
COREY	0.098	70.880	182
HERMAN	0.097	70.977	183
MAURICE	0.097	71.074	184
VERNON	0.097	71.171	185
ROBERTO	0.097	71.268	186
CLYDE	0.095	71.363	187
GLEN	0.094	71.457	188
HECTOR	0.094	71.551	189
SHANE	0.093	71.645	190
RICARDO	0.093	71.738	191
SAM	0.092	71.830	192
RICK	0.091	71.921	193
LESTER	0.091	72.011	194
BRENT	0.090	72.102	195
RAMON	0.090	72.192	196
CHARLIE	0.090	72.281	197
TYLER	0.089	72.371	198
GILBERT	0.089	72.460	199
GENE	0.087	72.547	200
MARC	0.087	72.634	201
REGINALD	0.084	72.717	202
RUBEN	0.082	72.800	203
BRETT	0.082	72.882	204
ANGEL	0.082	72.964	205
NATHANIEL	0.081	73.045	206
RAFAEL	0.081	73.126	207
LESLIE	0.081	73.207	208
EDGAR	0.080	73.287	209
MILTON	0.080	73.367	210
RAUL	0.079	73.446	211
BEN	0.078	73.524	212
CHESTER	0.078	73.602	213
CECIL	0.078	73.680	214
DUANE	0.077	73.757	215
FRANKLIN	0.077	73.834	216
ANDRE	0.076	73.910	217
ELMER	0.074	73.984	218
BRAD	0.073	74.057	219
GABRIEL	0.073	74.130	220
RON	0.072	74.202	221
MITCHELL	0.072	74.274	222
ROLAND	0.072	74.347	223
ARNOLD	0.072	74.419	224
HARVEY	0.072	74.491	225
JARED	0.071	74.562	226
ADRIAN	0.069	74.631	227
KARL	0.069	74.699	228
CORY	0.068	74.767	229
CLAUDE	0.068	74.835	230
ERIK	0.068	74.903	231
DARRYL	0.067	74.970	232
JAMIE	0.066	75.037	233
NEIL	0.066	75.102	234
JESSIE	0.065	75.168	235
CHRISTIAN	0.065	75.233	236
JAVIER	0.065	75.297	237
FERNANDO	0.065	75.362	238
CLINTON	0.065	75.427	239
TED	0.064	75.491	240

MATHEW	0.064	75.555	241
TYRONE	0.064	75.619	242
DARREN	0.064	75.683	243
LONNIE	0.064	75.746	244
LANCE	0.063	75.810	245
CODY	0.063	75.873	246
JULIO	0.063	75.936	247
KELLY	0.063	75.998	248
KURT	0.062	76.061	249
ALLAN	0.061	76.122	250
NELSON	0.061	76.182	251
GUY	0.060	76.243	252
CLAYTON	0.060	76.303	253
HUGH	0.060	76.363	254
MAX	0.059	76.421	255
DWAYNE	0.059	76.480	256
DWIGHT	0.058	76.538	257
ARMANDO	0.058	76.596	258
FELIX	0.058	76.654	259
JIMMIE	0.058	76.711	260
EVERETT	0.057	76.768	261
JORDAN	0.056	76.824	262
IAN	0.056	76.880	263
WALLACE	0.056	76.936	264
KEN	0.055	76.991	265
BOB	0.055	77.047	266
JAIME	0.055	77.102	267
CASEY	0.054	77.156	268
ALFREDO	0.054	77.210	269
ALBERTO	0.053	77.263	270
DAVE	0.053	77.316	271
IVAN	0.053	77.369	272
JOHNNIE	0.052	77.421	273
SIDNEY	0.052	77.474	274
BYRON	0.052	77.526	275
JULIAN	0.052	77.578	276
ISAAC	0.051	77.629	277
MORRIS	0.051	77.680	278
CLIFTON	0.050	77.730	279
WILLARD	0.050	77.780	280
DARYL	0.050	77.831	281
ROSS	0.050	77.880	282
VIRGIL	0.049	77.929	283
ANDY	0.049	77.979	284
MARSHALL	0.049	78.028	285
SALVADOR	0.049	78.077	286
PERRY	0.049	78.126	287
KIRK	0.049	78.175	288
SERGIO	0.049	78.224	289
MARION	0.048	78.272	290
TRACY	0.048	78.320	291
SETH	0.048	78.368	292
KENT	0.048	78.416	293
TERRANCE	0.048	78.464	294
RENE	0.048	78.512	295
EDUARDO	0.047	78.559	296
TERRENCE	0.047	78.606	297
ENRIQUE	0.046	78.652	298
FREDDIE	0.046	78.698	299
WADE	0.045	78.743	300

AUSTIN	0.044	78.786	301
STUART	0.044	78.830	302
FREDRICK	0.043	78.873	303
ARTURO	0.043	78.917	304
ALEJANDRO	0.043	78.960	305
JACKIE	0.043	79.002	306
JOEY	0.043	79.045	307
NICK	0.043	79.088	308
LUTHER	0.043	79.130	309
WENDELL	0.042	79.172	310
JEREMIAH	0.042	79.215	311
EVAN	0.042	79.257	312
JULIUS	0.042	79.298	313
DANA	0.042	79.340	314
DONNIE	0.041	79.381	315
OTIS	0.041	79.422	316
SHANNON	0.040	79.462	317
TREVOR	0.040	79.503	318
OLIVER	0.040	79.543	319
LUKE	0.040	79.583	320
HOMER	0.040	79.623	321
GERARD	0.040	79.663	322
DOUG	0.040	79.703	323
KENNY	0.039	79.742	324
HUBERT	0.039	79.782	325
ANGELO	0.039	79.821	326
SHAUN	0.039	79.859	327
LYLE	0.038	79.898	328
MATT	0.038	79.936	329
LYNN	0.038	79.974	330
ALFONSO	0.038	80.012	331
ORLANDO	0.037	80.049	332
REX	0.037	80.086	333
CARLTON	0.037	80.123	334
ERNESTO	0.037	80.160	335
CAMERON	0.037	80.197	336
NEAL	0.037	80.233	337
PABLO	0.036	80.270	338
LORENZO	0.036	80.306	339
OMAR	0.036	80.342	340
WILBUR	0.036	80.378	341
BLAKE	0.036	80.414	342
GRANT	0.036	80.450	343
HORACE	0.036	80.486	344
RODERICK	0.036	80.521	345
KERRY	0.036	80.557	346
ABRAHAM	0.035	80.592	347
WILLIS	0.035	80.627	348
RICKEY	0.035	80.662	349
JEAN	0.035	80.696	350
IRA	0.035	80.731	351
ANDRES	0.034	80.766	352
CESAR	0.034	80.800	353
JOHNATHAN	0.034	80.834	354
MALCOLM	0.034	80.868	355
RUDOLPH	0.034	80.902	356
DAMON	0.034	80.936	357
KELVIN	0.034	80.970	358
RUDY	0.034	81.004	359
PRESTON	0.034	81.037	360

ALTON	0.033	81.071	361
ARCHIE	0.033	81.104	362
MARCO	0.033	81.137	363
WM	0.033	81.170	364
PETE	0.032	81.202	365
RANDOLPH	0.032	81.234	366
GARRY	0.032	81.267	367
GEOFFREY	0.032	81.299	368
JONATHON	0.032	81.331	369
FELIPE	0.032	81.363	370
BENNIE	0.032	81.395	371
GERARDO	0.032	81.427	372
ED	0.032	81.458	373
DOMINIC	0.032	81.490	374
ROBIN	0.032	81.522	375
LOREN	0.032	81.553	376
DELBERT	0.031	81.585	377
COLIN	0.031	81.616	378
GUILLERMO	0.031	81.647	379
EARNEST	0.031	81.678	380
LUCAS	0.031	81.709	381
BENNY	0.030	81.739	382
NOEL	0.030	81.769	383
SPENCER	0.030	81.799	384
RODOLFO	0.030	81.828	385
MYRON	0.030	81.858	386
EDMUND	0.030	81.887	387
GARRETT	0.029	81.917	388
SALVATORE	0.029	81.946	389
CEDRIC	0.029	81.975	390
LOWELL	0.029	82.004	391
GREGG	0.029	82.032	392
SHERMAN	0.028	82.061	393
WILSON	0.028	82.089	394
DEVIN	0.028	82.117	395
SYLVESTER	0.028	82.145	396
KIM	0.028	82.173	397
ROOSEVELT	0.028	82.201	398
ISRAEL	0.028	82.229	399
JERMAINE	0.028	82.257	400
FORREST	0.027	82.284	401
WILBERT	0.027	82.310	402
LELAND	0.027	82.337	403
SIMON	0.026	82.363	404
GUADALUPE	0.026	82.390	405
CLARK	0.026	82.416	406
IRVING	0.026	82.442	407
CARROLL	0.026	82.468	408
BRYANT	0.026	82.494	409
OWEN	0.026	82.519	410
RUFUS	0.025	82.545	411
WOODROW	0.025	82.570	412
SAMMY	0.025	82.595	413
KRISTOPHER	0.025	82.620	414
MACK	0.025	82.645	415
LEVI	0.025	82.670	416
MARCOS	0.025	82.695	417
GUSTAVO	0.025	82.720	418
JAKE	0.025	82.744	419
LIONEL	0.024	82.769	420

MARTY	0.024	82.793	421
TAYLOR	0.024	82.817	422
ELLIS	0.024	82.842	423
DALLAS	0.024	82.866	424
GILBERTO	0.024	82.890	425
CLINT	0.024	82.914	426
NICOLAS	0.024	82.938	427
LAURENCE	0.024	82.962	428
ISMAEL	0.024	82.985	429
ORVILLE	0.024	83.009	430
DREW	0.024	83.033	431
JODY	0.024	83.056	432
ERVIN	0.023	83.080	433
DEWEY	0.023	83.103	434
AL	0.023	83.126	435
WILFRED	0.023	83.150	436
JOSH	0.023	83.173	437
HUGO	0.023	83.196	438
IGNACIO	0.023	83.219	439
CALEB	0.023	83.241	440
TOMAS	0.023	83.264	441
SHELDON	0.023	83.287	442
ERICK	0.023	83.310	443
FRANKIE	0.023	83.332	444
STEWART	0.022	83.354	445
DOYLE	0.022	83.377	446
DARREL	0.022	83.399	447
ROGELIO	0.022	83.421	448
TERENCE	0.022	83.443	449
SANTIAGO	0.022	83.465	450
ALONZO	0.022	83.487	451
ELIAS	0.022	83.508	452
BERT	0.022	83.530	453
ELBERT	0.022	83.552	454
RAMIRO	0.022	83.573	455
CONRAD	0.022	83.595	456
PAT	0.022	83.616	457
NOAH	0.022	83.638	458
GRADY	0.021	83.659	459
PHIL	0.021	83.681	460
CORNELIUS	0.021	83.702	461
LAMAR	0.021	83.723	462
ROLANDO	0.021	83.744	463
CLAY	0.021	83.765	464
PERCY	0.021	83.786	465
DEXTER	0.021	83.806	466
BRADFORD	0.021	83.827	467
MERLE	0.021	83.848	468
DARIN	0.020	83.868	469
AMOS	0.020	83.888	470
TERRELL	0.020	83.909	471
MOSES	0.020	83.929	472
IRVIN	0.020	83.949	473
SAUL	0.020	83.968	474
ROMAN	0.020	83.988	475
DARNELL	0.020	84.008	476
RANDAL	0.020	84.027	477
TOMMIE	0.020	84.047	478
TIMMY	0.019	84.066	479
DARRIN	0.019	84.086	480

WINSTON	0.019	84.105	481
BRENDAN	0.019	84.124	482
TOBY	0.019	84.144	483
VAN	0.019	84.163	484
ABEL	0.019	84.182	485
DOMINICK	0.019	84.201	486
BOYD	0.019	84.220	487
COURTNEY	0.019	84.240	488
JAN	0.019	84.259	489
EMILIO	0.019	84.277	490
ELIJAH	0.019	84.296	491
CARY	0.019	84.315	492
DOMINGO	0.019	84.334	493
SANTOS	0.019	84.353	494
AUBREY	0.019	84.372	495
EMMETT	0.019	84.390	496
MARLON	0.019	84.409	497
EMANUEL	0.019	84.428	498
JERALD	0.019	84.446	499
EDMOND	0.019	84.465	500
EMIL	0.019	84.483	501
DEWAYNE	0.018	84.502	502
WILL	0.018	84.520	503
OTTO	0.018	84.538	504
TEDDY	0.018	84.556	505
REYNALDO	0.018	84.574	506
BRET	0.018	84.592	507
MORGAN	0.018	84.610	508
JESS	0.018	84.628	509
TRENT	0.018	84.646	510
HUMBERTO	0.018	84.664	511
EMMANUEL	0.018	84.681	512
STEPHAN	0.018	84.699	513
LOUIE	0.018	84.717	514
VICENTE	0.017	84.734	515
LAMONT	0.017	84.751	516
STACY	0.017	84.769	517
GARLAND	0.017	84.786	518
MILES	0.017	84.803	519
MICAH	0.017	84.820	520
EFRAIN	0.017	84.837	521
BILLIE	0.017	84.854	522
LOGAN	0.017	84.871	523
HEATH	0.017	84.887	524
RODGER	0.017	84.904	525
HARLEY	0.017	84.921	526
DEMETRIUS	0.017	84.937	527
ETHAN	0.017	84.954	528
ELDON	0.017	84.970	529
ROCKY	0.016	84.987	530
PIERRE	0.016	85.003	531
JUNIOR	0.016	85.020	532
FREDDY	0.016	85.036	533
ELI	0.016	85.052	534
BRYCE	0.016	85.068	535
ANTOINE	0.016	85.084	536
ROBBIE	0.016	85.100	537
KENDALL	0.016	85.116	538
ROYCE	0.016	85.132	539
STERLING	0.016	85.148	540

MICKEY	0.016	85.164	541
CHASE	0.016	85.180	542
GROVER	0.016	85.196	543
ELTON	0.016	85.212	544
CLEVELAND	0.016	85.228	545
DYLAN	0.016	85.243	546
CHUCK	0.016	85.259	547
DAMIAN	0.016	85.274	548
REUBEN	0.015	85.290	549
STAN	0.015	85.305	550
AUGUST	0.015	85.321	551
LEONARDO	0.015	85.336	552
JASPER	0.015	85.351	553
RUSSEL	0.015	85.367	554
ERWIN	0.015	85.382	555
BENITO	0.015	85.397	556
HANS	0.015	85.412	557
MONTE	0.015	85.427	558
BLAINE	0.015	85.442	559
ERNIE	0.015	85.456	560
CURT	0.015	85.471	561
QUENTIN	0.015	85.486	562
AGUSTIN	0.015	85.500	563
MURRAY	0.015	85.515	564
JAMAL	0.014	85.529	565
DEVON	0.014	85.544	566
ADOLFO	0.014	85.558	567
HARRISON	0.014	85.573	568
TYSON	0.014	85.587	569
BURTON	0.014	85.601	570
BRADY	0.014	85.616	571
ELLIOTT	0.014	85.630	572
WILFREDO	0.014	85.644	573
BART	0.014	85.658	574
JARROD	0.014	85.672	575
VANCE	0.014	85.686	576
DENIS	0.014	85.700	577
DAMIEN	0.014	85.714	578
JOAQUIN	0.014	85.728	579
HARLAN	0.014	85.742	580
DESMOND	0.014	85.756	581
ELLIOT	0.014	85.770	582
DARWIN	0.014	85.783	583
ASHLEY	0.014	85.797	584
GREGORIO	0.014	85.811	585
BUDDY	0.014	85.824	586
XAVIER	0.013	85.838	587
KERMIT	0.013	85.851	588
ROSCOE	0.013	85.865	589
ESTEBAN	0.013	85.878	590
ANTON	0.013	85.891	591
SOLOMON	0.013	85.904	592
SCOTTY	0.013	85.917	593
NORBERT	0.013	85.930	594
ELVIN	0.013	85.943	595
WILLIAMS	0.013	85.956	596
NOLAN	0.013	85.969	597
CAREY	0.013	85.982	598
ROD	0.013	85.994	599
QUINTON	0.013	86.007	600

HAL	0.013	86.020	601
BRAIN	0.013	86.033	602
ROB	0.013	86.045	603
ELWOOD	0.013	86.058	604
KENDRICK	0.013	86.070	605
DARIUS	0.013	86.083	606
MOISES	0.013	86.096	607
SON	0.012	86.108	608
MARLIN	0.012	86.120	609
FIDEL	0.012	86.133	610
THADDEUS	0.012	86.145	611
CLIFF	0.012	86.158	612
MARCEL	0.012	86.170	613
ALI	0.012	86.182	614
JACKSON	0.012	86.195	615
RAPHAEL	0.012	86.207	616
BRYON	0.012	86.219	617
ARMAND	0.012	86.231	618
ALVARO	0.012	86.244	619
JEFFRY	0.012	86.256	620
DANE	0.012	86.268	621
JOESPH	0.012	86.280	622
THURMAN	0.012	86.292	623
NED	0.012	86.304	624
SAMMIE	0.012	86.316	625
RUSTY	0.012	86.328	626
MICHEL	0.012	86.339	627
MONTY	0.012	86.351	628
RORY	0.012	86.363	629
FABIAN	0.012	86.374	630
REGGIE	0.012	86.386	631
MASON	0.012	86.397	632
GRAHAM	0.012	86.409	633
KRIS	0.011	86.420	634
ISAIAH	0.011	86.432	635
VAUGHN	0.011	86.443	636
GUS	0.011	86.454	637
AVERY	0.011	86.466	638
LOYD	0.011	86.477	639
DIEGO	0.011	86.488	640
ALEXIS	0.011	86.499	641
ADOLPH	0.011	86.511	642
NORRIS	0.011	86.522	643
MILLARD	0.011	86.533	644
ROCCO	0.011	86.544	645
GONZALO	0.011	86.555	646
DERICK	0.011	86.566	647
RODRIGO	0.011	86.577	648
GERRY	0.011	86.588	649
STACEY	0.011	86.599	650
CARMEN	0.011	86.610	651
WILEY	0.011	86.621	652
RIGOBERTO	0.011	86.632	653
ALPHONSO	0.011	86.643	654
TY	0.011	86.654	655
SHELBY	0.011	86.664	656
RICKIE	0.011	86.675	657
NOE	0.011	86.686	658
VERN	0.010	86.696	659
BOBBIE	0.010	86.707	660

REED	0.010	86.717	661
JEFFERSON	0.010	86.727	662
ELVIS	0.010	86.738	663
BERNARDO	0.010	86.748	664
MAURICIO	0.010	86.758	665
HIRAM	0.010	86.768	666
DONOVAN	0.010	86.778	667
BASIL	0.010	86.789	668
RILEY	0.010	86.799	669
OLLIE	0.010	86.809	670
NICKOLAS	0.010	86.819	671
MAYNARD	0.010	86.829	672
SCOT	0.010	86.840	673
VINCE	0.010	86.850	674
QUINCY	0.010	86.860	675
EDDY	0.010	86.870	676
SEBASTIAN	0.010	86.880	677
FEDERICO	0.010	86.890	678
ULYSSES	0.010	86.900	679
HERIBERTO	0.010	86.910	680
DONNELL	0.010	86.920	681
COLE	0.010	86.929	682
DENNY	0.010	86.939	683
DAVIS	0.010	86.949	684
GAVIN	0.010	86.959	685
EMERY	0.010	86.969	686
WARD	0.010	86.979	687
ROMEO	0.010	86.989	688
JAYSON	0.010	86.998	689
DION	0.010	87.008	690
DANTE	0.010	87.018	691
CLEMENT	0.010	87.028	692
COY	0.010	87.037	693
ODELL	0.010	87.047	694
MAXWELL	0.010	87.057	695
JARVIS	0.010	87.066	696
BRUNO	0.010	87.076	697
ISSAC	0.010	87.086	698
MARY	0.009	87.095	699
DUDLEY	0.009	87.104	700
BROCK	0.009	87.114	701
SANFORD	0.009	87.123	702
COLBY	0.009	87.133	703
CARMELO	0.009	87.142	704
BARNEY	0.009	87.152	705
NESTOR	0.009	87.161	706
HOLLIS	0.009	87.170	707
STEFAN	0.009	87.180	708
DONNY	0.009	87.189	709
ART	0.009	87.198	710
LINWOOD	0.009	87.208	711
BEAU	0.009	87.217	712
WELDON	0.009	87.226	713
GALEN	0.009	87.235	714
ISIDRO	0.009	87.244	715
TRUMAN	0.009	87.253	716
DELMAR	0.009	87.262	717
JOHNATHON	0.009	87.271	718
SILAS	0.009	87.280	719
FREDERIC	0.009	87.289	720

DICK	0.009	87.298	721
KIRBY	0.009	87.307	722
IRWIN	0.009	87.316	723
CRUZ	0.009	87.325	724
MERLIN	0.009	87.334	725
MERRILL	0.009	87.343	726
CHARLEY	0.009	87.351	727
MARCELINO	0.009	87.360	728
LANE	0.009	87.369	729
HARRIS	0.009	87.378	730
CLEO	0.009	87.386	731
CARLO	0.009	87.395	732
TRENTON	0.009	87.404	733
KURTIS	0.009	87.413	734
HUNTER	0.009	87.421	735
AURELIO	0.009	87.430	736
WINFRED	0.009	87.438	737
VITO	0.009	87.447	738
COLLIN	0.009	87.456	739
DENVER	0.009	87.464	740
CARTER	0.009	87.473	741
LEONEL	0.008	87.481	742
EMORY	0.008	87.490	743
PASQUALE	0.008	87.498	744
MOHAMMAD	0.008	87.506	745
MARIANO	0.008	87.514	746
DANIAL	0.008	87.523	747
BLAIR	0.008	87.531	748
LANDON	0.008	87.539	749
DIRK	0.008	87.548	750
BRANDEN	0.008	87.556	751
ADAN	0.008	87.564	752
NUMBERS	0.008	87.572	753
CLAIR	0.008	87.581	754
BUFORD	0.008	87.589	755
GERMAN	0.008	87.597	756
BERNIE	0.008	87.605	757
WILMER	0.008	87.613	758
JOAN	0.008	87.621	759
EMERSON	0.008	87.629	760
ZACHERY	0.008	87.637	761
FLETCHER	0.008	87.645	762
JACQUES	0.008	87.653	763
ERROL	0.008	87.661	764
DALTON	0.008	87.669	765
MONROE	0.008	87.676	766
JOSUE	0.008	87.684	767
DOMINIQUE	0.008	87.692	768
EDUARDO	0.008	87.700	769
BOOKER	0.008	87.708	770
WILFORD	0.008	87.715	771
SONNY	0.008	87.723	772
SHELTON	0.008	87.731	773
CARSON	0.008	87.739	774
THERON	0.008	87.746	775
RAYMUNDO	0.008	87.754	776
DAREN	0.008	87.762	777
TRISTAN	0.008	87.769	778
HOUSTON	0.008	87.777	779
ROBBY	0.008	87.785	780

LINCOLN	0.008	87.792	781
JAME	0.008	87.800	782
GENARO	0.008	87.807	783
GALE	0.008	87.815	784
BENNETT	0.008	87.822	785
OCTAVIO	0.008	87.830	786
CORNELL	0.008	87.838	787
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ALVA	0.007	87.883	793
GIOVANNI	0.007	87.890	794
GARTH	0.007	87.897	795
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CYRIL	0.007	87.912	797
RONNY	0.007	87.920	798
STEVIE	0.007	87.927	799
LON	0.007	87.934	800
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ERIN	0.007	87.949	802
DUNCAN	0.007	87.956	803
KENNITH	0.007	87.963	804
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MITCHEL	0.007	88.063	818
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ZANE	0.007	88.077	820
RICH	0.007	88.084	821
JAMEL	0.007	88.091	822
LAZARO	0.007	88.098	823
ALPHONSE	0.007	88.105	824
RANDELL	0.007	88.112	825
MAJOR	0.007	88.119	826
JOHNIE	0.007	88.126	827
JARRETT	0.007	88.133	828
BROOKS	0.007	88.140	829
ARIEL	0.007	88.147	830
ABDUL	0.007	88.154	831
DUSTY	0.007	88.161	832
LUCIANO	0.007	88.168	833
LINDSEY	0.007	88.174	834
TRACEY	0.007	88.181	835
SEYMOUR	0.007	88.188	836
SCOTTIE	0.007	88.195	837
EUGENIO	0.007	88.202	838
MOHAMMED	0.007	88.208	839
SANDY	0.007	88.215	840

VALENTIN	0.007	88.222	841
CHANCE	0.007	88.228	842
ARNULFO	0.007	88.235	843
LUCIEN	0.007	88.242	844
FERDINAND	0.007	88.248	845
THAD	0.007	88.255	846
EZRA	0.007	88.262	847
SYDNEY	0.007	88.268	848
ALDO	0.007	88.275	849
RUBIN	0.006	88.281	850
ROYAL	0.006	88.288	851
MITCH	0.006	88.294	852
EARLE	0.006	88.301	853
ABE	0.006	88.307	854
WYATT	0.006	88.314	855
MARQUIS	0.006	88.320	856
LANNY	0.006	88.326	857
KAREEM	0.006	88.333	858
JAMAR	0.006	88.339	859
BORIS	0.006	88.346	860
ISIAH	0.006	88.352	861
EMILE	0.006	88.358	862
ELMO	0.006	88.365	863
ARON	0.006	88.371	864
LEOPOLDO	0.006	88.377	865
EVERETTE	0.006	88.384	866
JOSEF	0.006	88.390	867
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ELOY	0.006	88.403	869
DORIAN	0.006	88.409	870
RODRICK	0.006	88.415	871
REINALDO	0.006	88.421	872
LUCIO	0.006	88.427	873
JERROD	0.006	88.434	874
WESTON	0.006	88.440	875
HERSHEL	0.006	88.446	876
BARTON	0.006	88.452	877
PARKER	0.006	88.458	878
LEMUEL	0.006	88.464	879
LAVERN	0.006	88.470	880
BURT	0.006	88.477	881
JULES	0.006	88.483	882
GIL	0.006	88.489	883
ELISEO	0.006	88.495	884
AHMAD	0.006	88.501	885
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EFREN	0.006	88.513	887
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ALDEN	0.006	88.525	889
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COLEMAN	0.006	88.537	891
REFUGIO	0.006	88.543	892
DINO	0.006	88.549	893
OSVALDO	0.006	88.555	894
LES	0.006	88.560	895
DEANDRE	0.006	88.566	896
NORMAND	0.006	88.572	897
KIETH	0.006	88.578	898
IVORY	0.006	88.584	899
ANDREA	0.006	88.590	900

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JEROLD	0.006	88.613	904
FRITZ	0.006	88.619	905
ROSENDO	0.006	88.624	906
MILFORD	0.006	88.630	907
SANG	0.006	88.636	908
DEON	0.006	88.641	909
CHRISTOPER	0.006	88.647	910
ALFONZO	0.006	88.653	911
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OLIN	0.006	88.715	922
FOSTER	0.006	88.720	923
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GINO	0.006	88.743	927
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BERRY	0.006	88.754	929
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SAL	0.005	88.880	952
ROSARIO	0.005	88.885	953
ORVAL	0.005	88.891	954
MAURO	0.005	88.896	955
DANNIE	0.005	88.901	956
ZACHARIAH	0.005	88.907	957
OLEN	0.005	88.912	958
ANIBAL	0.005	88.917	959
MILO	0.005	88.923	960

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FRANCES	0.005	88.933	962
THANH	0.005	88.939	963
DILLON	0.005	88.944	964
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MAC	0.005	89.022	979
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DAMION	0.005	89.067	988
CHI	0.005	89.072	989
ANTONE	0.005	89.077	990
WALDO	0.005	89.082	991
FREDRIC	0.005	89.087	992
BRADLY	0.005	89.092	993
QUINN	0.005	89.097	994
KIP	0.005	89.102	995
BURL	0.005	89.107	996
WALKER	0.005	89.112	997
TYREE	0.005	89.117	998
JEFFEREY	0.005	89.122	999
AHMED	0.005	89.127	1000
WILLY	0.005	89.132	1001
STANFORD	0.005	89.137	1002
OREN	0.005	89.142	1003
NOBLE	0.005	89.146	1004
MOSHE	0.005	89.151	1005
MIKEL	0.005	89.156	1006
ENOCH	0.005	89.161	1007
BRENDON	0.005	89.166	1008
QUINTIN	0.005	89.171	1009
JAMISON	0.005	89.176	1010
FLORENCIO	0.005	89.181	1011
DARRICK	0.005	89.185	1012
TOBIAS	0.005	89.190	1013
MINH	0.005	89.195	1014
HASSAN	0.005	89.200	1015
GIUSEPPE	0.005	89.205	1016
DEMARCUS	0.005	89.210	1017
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LYNDON	0.005	89.224	1020

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BERTRAM	0.005	89.262	1028
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HUEY	0.005	89.271	1030
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DWAIN	0.005	89.281	1032
DONTE	0.005	89.285	1033
TYRON	0.005	89.290	1034
OMER	0.005	89.295	1035
ISAIAS	0.005	89.299	1036
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BARRETT	0.005	89.336	1044
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MCKINLEY	0.005	89.350	1047
MAXIMO	0.005	89.355	1048
GARFIELD	0.005	89.359	1049
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ABRAM	0.005	89.377	1053
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KING	0.004	89.386	1055
EMMITT	0.004	89.391	1056
DARON	0.004	89.395	1057
CHONG	0.004	89.400	1058
SAMUAL	0.004	89.404	1059
PARIS	0.004	89.409	1060
OTHA	0.004	89.413	1061
MIQUEL	0.004	89.418	1062
LACY	0.004	89.422	1063
EUSEBIO	0.004	89.426	1064
DONG	0.004	89.431	1065
DOMENIC	0.004	89.435	1066
DARRON	0.004	89.440	1067
BUSTER	0.004	89.444	1068
ANTONIA	0.004	89.449	1069
WILBER	0.004	89.453	1070
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JC	0.004	89.462	1072
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CHAS	0.004	89.480	1076
FLORENTINO	0.004	89.484	1077
ELROY	0.004	89.489	1078
CLEMENTE	0.004	89.493	1079
ARDEN	0.004	89.497	1080

NEVILLE	0.004	89.502	1081
KELLEY	0.004	89.506	1082
EDISON	0.004	89.510	1083
DESHAWN	0.004	89.515	1084
CARROL	0.004	89.519	1085
SHAYNE	0.004	89.523	1086
NATHANIAL	0.004	89.528	1087
JORDON	0.004	89.532	1088
DANILO	0.004	89.536	1089
CLAUD	0.004	89.541	1090
VAL	0.004	89.545	1091
SHERWOOD	0.004	89.549	1092
RAYMON	0.004	89.554	1093
RAYFORD	0.004	89.558	1094
CRISTOBAL	0.004	89.562	1095
AMBROSE	0.004	89.567	1096
TITUS	0.004	89.571	1097
HYMAN	0.004	89.575	1098
FELTON	0.004	89.579	1099
EZEQUIEL	0.004	89.584	1100
ERASMO	0.004	89.588	1101
STANTON	0.004	89.592	1102
LONNY	0.004	89.596	1103
LEN	0.004	89.601	1104
IKE	0.004	89.605	1105
MILAN	0.004	89.609	1106
LINO	0.004	89.613	1107
JAROD	0.004	89.617	1108
HERB	0.004	89.622	1109
ANDREAS	0.004	89.626	1110
WALTON	0.004	89.630	1111
RHETT	0.004	89.634	1112
PALMER	0.004	89.638	1113
JUDE	0.004	89.642	1114
DOUGLASS	0.004	89.647	1115
CORDELL	0.004	89.651	1116
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TONEY	0.004	89.667	1120
NATHANAEL	0.004	89.671	1121
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BRITT	0.004	89.679	1123
BENEDICT	0.004	89.684	1124
MOSE	0.004	89.688	1125
HONG	0.004	89.692	1126
LEIGH	0.004	89.696	1127
JOHNSON	0.004	89.700	1128
ISREAL	0.004	89.704	1129
GAYLE	0.004	89.708	1130
GARRET	0.004	89.712	1131
FAUSTO	0.004	89.716	1132
ASA	0.004	89.720	1133
ARLEN	0.004	89.724	1134
ZACK	0.004	89.728	1135
WARNER	0.004	89.732	1136
MODESTO	0.004	89.736	1137
FRANCESCO	0.004	89.740	1138
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GASTON	0.004	89.756	1142
FILIBERTO	0.004	89.759	1143
DEANGELO	0.004	89.763	1144
MICHALE	0.004	89.767	1145
GRANVILLE	0.004	89.771	1146
WES	0.004	89.775	1147
MALIK	0.004	89.779	1148
ZACKARY	0.004	89.783	1149
TUAN	0.004	89.787	1150
NICKY	0.004	89.790	1151
ELDRIDGE	0.004	89.794	1152
CRISTOPHER	0.004	89.798	1153
CORTEZ	0.004	89.802	1154
ANTIONE	0.004	89.806	1155
MALCOM	0.004	89.809	1156
LONG	0.004	89.813	1157
KOREY	0.004	89.817	1158
JOSPEH	0.004	89.821	1159
COLTON	0.004	89.825	1160
WAYLON	0.004	89.828	1161
VON	0.004	89.832	1162
HOSEA	0.004	89.836	1163
SHAD	0.004	89.840	1164
SANTO	0.004	89.843	1165
RUDOLF	0.004	89.847	1166
ROLF	0.004	89.851	1167
REY	0.004	89.855	1168
RENALDO	0.004	89.858	1169
MARCELLUS	0.004	89.862	1170
LUCIUS	0.004	89.866	1171
LESLEY	0.004	89.870	1172
KRISTOFER	0.004	89.873	1173
BOYCE	0.004	89.877	1174
BENTON	0.004	89.881	1175
MAN	0.004	89.884	1176
KASEY	0.004	89.888	1177
JEWELL	0.004	89.892	1178
HAYDEN	0.004	89.895	1179
HARLAND	0.004	89.899	1180
ARNOLDO	0.004	89.903	1181
RUEBEN	0.004	89.907	1182
LEANDRO	0.004	89.910	1183
KRAIG	0.004	89.914	1184
JERRELL	0.004	89.918	1185
JEROMY	0.004	89.921	1186
HOBERT	0.004	89.925	1187
CEDRICK	0.004	89.929	1188
ARLIE	0.004	89.932	1189
WINFORD	0.004	89.936	1190
WALLY	0.004	89.939	1191
PATRICIA	0.004	89.943	1192
LUIGI	0.004	89.947	1193
KENETH	0.004	89.950	1194
JACINTO	0.004	89.954	1195
GRAIG	0.004	89.958	1196
FRANKLYN	0.004	89.961	1197
EDMUNDO	0.004	89.965	1198
SID	0.004	89.968	1199
PORTER	0.004	89.972	1200

LEIF	0.004	89.976	1201
LAUREN	0.004	89.979	1202
JERAMY	0.004	89.983	1203
ELISHA	0.004	89.986	1204
BUCK	0.004	89.990	1205
WILLIAN	0.004	89.994	1206
VINCENZO	0.004	89.997	1207
SHON	0.004	90.001	1208
MICHAL	0.004	90.004	1209
LYNWOOD	0.004	90.008	1210
LINDSAY	0.004	90.011	1211
JEWEL	0.004	90.015	1212
JERE	0.004	90.018	1213
HAI	0.004	90.022	1214
ELDEN	0.004	90.026	1215
DORSEY	0.004	90.029	1216
DARELL	0.004	90.033	1217
BRODERICK	0.004	90.036	1218
ALONSO	0.004	90.040	1219

Exhibit 20

CONFIDENTIAL

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
CREATIVE ARTS BY CALLOWAY, LLC,

Plaintiff,

-against- 01 CIV-3192 (BDP)

CHRISTOPHER W. BROOKS,

Defendant.

----- X

866 United Nations Plaza
New York, New York

May 19, 2001
10:15 a.m.

CONFIDENTIAL DEPOSITION of CABELLA CALLOWAY
LANGSAM, in the above-entitled action, taken by the
Defendant, pursuant to the Federal Rules of Civil
Procedure, held at the above time and place, taken
before Trina B. Otha, a Notary Public and Certified
Shorthand Reporter.

**PERSONAL
CONFIDENTIAL**

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

closed it.

Q Are you aware of something called the Cab Calloway School of the Arts?

A I definitely am.

Q What is that?

A It's a public school in the Red Clay school district in Wilmington, Delaware. It is a middle school through high school performing arts school, strictly cut in half between academics and creative arts. Students may choose a major and a minor. The major could be in drama, it could be in theater, it could be in communication arts, it could be in fine arts, it could be in visual arts, drama, as I said, and musical arts. And then of course, there's the whole academic side of this that is very, very heavily enforced for the marriage of the two, of the creative side of the school and the academic side of the school. A lot of the curriculum is built very creatively around that concept.

Q When was the school established under that name?

A Under that name? 1994 -- '93, I'm sorry.

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

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Q While your father was alive?

A My father was alive, correct.

Q Did he grant any type of license to the school district or whomever to use the name Calloway?

A The school district came to him and asked him if it would be all right if they named the school. Actually, it was done by vote, by the student body. The student body was given various different names to choose from, and the students chose Cab Calloway to have as the name of their school.

Q Was there any type of written agreement?

A No, we went -- I was the board president of Cab Calloway School of the Arts before it was Cab Calloway School of the Arts. It was called the Creative and Performing Arts Middle School in Wilmington Delaware, and it was basically -- I would say the structure was built on the music school in Harlem and the same concepts. We started, four or five of us, with an idea and a dream, and it blossomed and it is blossoming even more.

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

Court. So I have never seen this contract.

A Stan Scottland has copies of this, he is a third party and he did most of my father's management at that time. So I would imagine that Stan Scottland would have any copy of this contract. More than likely, we would not have a copy of the contract. He had a lot of the papers or contracts that they used for my father's performances, contracts for various different things he did, and Stan Scottland was the one that had all of these. And during our litigation we have asked them to produce these things, and they just don't get produced. So I don't see how I can create a document that doesn't exist, but it should.

Q Other than Gear, Inc. are you aware of anyone else who has a license or permission to use Cab Calloway's name or likeness on merchandise?

A Not on merchandise, no.

Q On anything else?

A Not that I can think of.

Q Is there anybody at Creative Arts or otherwise who's responsible for ensuring that there's no unauthorized use of Cab Calloway's name

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

sound recordings?

A Not that I know of, as long as it was his music.

Q Has Creative Arts LLC ever raised any objection to sound recordings with respect to any use of sound recordings or cover art with the name Cab Calloway?

A Not yet.

Q Is it your intention as a manager of Creative Arts by Calloway that record companies can only use the name Cab Calloway on sound recordings with your permission?

A As a manager, when we finally become fully up and running, we're going to sit and negotiate some of the contracts so I know what people are doing.

Q That's not my question. Let's assume that a music company is going to put out a recording of only Cab Calloway's music. Is it your belief as a manager of Creative Arts by Calloway LLC that in order to call the recording Cab Calloway or to use Cab Calloway's name on the recording, they must first get the permission of Creative Arts by Calloway, LLC?

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

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A That is correct.

Q Have you obtained any legal opinion on that issue? I just want a yes or no.

A No.

Q So that's just a layperson's opinion?

A Yes, mm-hmm.

Q As of this date, there's been no permission made or denied to any record company?

A Not that I know of.

Q Any use by these record companies of the Cab Calloway name has been without any authorization by either yourself or Creative Arts?

A Except for the one that was just done by -- what was the name of the one that was just done by -- the last one that they did, they're doing it in a sequence --

MR. KARLIN: I can't --

whatever you know.

A I can't remember the name of that. We were contacted by one of the record companies that they were going to use my father's name in various different advertising for the record companies and for the new CDs or CD covers or

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

something, we were contacted as to whether we agreed or disagree with what they were using, and I can't give you the name as I sit here.

Q Let me show you three CDs that we recently purchased from a local record store. Can you tell me with respect to these three CDs whether Creative Arts or Zulme Calloway, if you know whether either gave permission to the record companies to use the name of Cab Calloway on these recordings?

A I have no idea.

Q Has anyone objected, as far as you know, to this use?

A Not that I have any idea of, no.

Q And is it your belief that -- that Creative Arts by Calloway has to give permission for the use of the name of Cab Calloway before the record companies can use it in the manner in which they're using it?

A In the future, yes, ma'am.

Q Now, if you now look at paragraph 12, can you tell me who made the decision to seek a registration of Cab Calloway in the patent and trademark office?

A I did.

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

MS. SOLOMON: What about the
exhibits?

MR. KARLIN: No, no.

MS. SOLOMON: That's it.

(Time noted: 1:15 p.m.)

Cabella Calloway Langsam
CABELLA CALLOWAY LANGSAM

Subscribed and sworn to

before me this 2 day

of June, ²⁰⁰¹2000

DELORIS CRIBB
NOTARY PUBLIC

Deloris Cribb My Commission Expires Feb. 22, 2002

Notary Public

137

CABELLA CALLOWAY LANGSAM - CONFIDENTIAL

ERRATA SHEET

[illegible]

SIGNATURE PAGE

OF

CABELLA CALLOWAY LANGSAM

I hereby acknowledge that I have read the foregoing deposition, and that the same is a true and correct transcription of the answers given by me to the questions propounded, except for the changes, if any, noted on the attached errata sheet.

SIGNATURE:

Cabella Calloway Langsam

WITNESSED BY:

Paul Duran

DATE:

6.2.01

Exhibit 21

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 Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 WHITE PLAINS DIVISION

CREATIVE ARTS BY CALLOWAY,)
 LLC, a Delaware limited liability company,)
 d/b/a C.A.B. CALLOWAY, LLC,)

Plaintiff,)

v.)

CHRISTOPHER W. BROOKS, an)
 individual, d/b/a THE CAB CALLOWAY)
 ORCHESTRA,)

Defendant.)

CIVIL ACTION

FILE NO. 01 CIV. 3192 (BDP)

DECLARATION OF CABELLA CALLOWAY LANGSAM

Cabella Calloway Langsam declares under penalty of perjury, as follows:

1. I am a manager of plaintiff in this action, and I am the daughter of the late Cab Calloway and his surviving widow, Zulme Calloway. I submit this declaration in opposition to defendant's motion for summary judgment and in reply to defendant's opposition to

9. All of my mother's claims against Calloway Entertainment, Inc., as well as against its predecessors, subsidiaries and corporate officers, settled in September 2000 before the Hon. Ronald S.W. Lew, United States District Judge, Central District of California.
10. As part of this settlement, Calloway Entertainment, Inc. provided to my mother, and to the Court, with an accounting of all monies it had received under the various contracts and agreements my father and mother had executed with its predecessors in 1993 and 1994. Attached hereto as Exhibit A is a true and correct copy of this accounting.
11. According to this accounting, Calloway Entertainment, Inc., including its subsidiary, Hi-De-Ho Man Music, Inc., collected over \$225,000 in royalties due my father from the sales of his various entertainment services. Calloway Entertainment, Inc. also collected \$2,543.00 on August 14, 1998 from the Roger Richman Agency, which, Calloway Entertainment, Inc. represented, was generated from merchandising rights purportedly given to its predecessors by my father. (My father passed away in November 1994.)

OTHER LICENSES

12. It is my understanding that my father granted a license to Gear, Ink. to use his image on clothing. Its address is 715 Bordeaux Street, New Orleans, LA 70115.
13. After my father passed away, my mother received royalties from Gear, Ink. under this license.
14. This license was subsequently assigned to plaintiff.

PLAINTIFF

15. I am a founding member of plaintiff, which was organized effective December 25, 2000, which was my father's birthday.

CHRIS CALLOWAY

21. Both my mother and plaintiff have given my sister, entertainer Chris Calloway, verbal permission to use the mark "CAB CALLOWAY," subject to plaintiff's approval, in relation to her endeavors in the entertainment industry.

I hereby declare under the penalty of perjury according to the laws of the United States of America that the above is true and correct.

Signed this 7th day of June, 2001, at Hockessin, Delaware.

Cabella Calloway Langsam
CABELLA CALLOWAY LANGSAM

Exhibit 22

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COPY

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK
 WHITE PLAINS DIVISION

CREATIVE ARTS BY CALLOWAY,)
 LLC, a Delaware limited liability company,)
 d/b/a C.A.B. CALLOWAY, LLC,)

Plaintiff,)

v.)

CHRISTOPHER W. BROOKS, an)
 individual, d/b/a THE CAB CALLOWAY)
 ORCHESTRA,)

Defendant.)
 _____)
)

CIVIL ACTION

FILE NO. 01 CIV. 3192 (BDP)

**PLAINTIFF'S RULE 56.1 STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE EXISTS A GENUINE ISSUE TO BE TRIED.**

In opposition to defendant Christopher W. Brooks' motion for summary judgment,
 pursuant to Local Rule 56.1, plaintiff submits the following statement of material facts as to

16. During his lifetime, Cab Calloway sold hundreds of thousands of recordings of his compositions and performances. (*Id.* at ¶5.)
17. The sale of Cab Calloway's recordings continue to this day. (*Id.* at ¶5.)
18. Additionally, videos of motions pictures wherein Cab Calloway appeared, and videos of his performances, continue to be sold today. (*Id.* at ¶6.)
19. Cab Calloway, during his lifetime, received royalties from the sales of his entertainment works and services; including, but not limited to, recordings, motion pictures, videos and television programs. (*Id.* at ¶7.)
20. Prior to his death, Cab Calloway granted a license to Gear, Ink. to use his image on clothing. (*Id.* at 12; *see also*, Scotland Decl., ¶5.)

CALLOWAY ENTERTAINMENT, INC.

21. On or about May 20, 1994, Cab Calloway executed an agreement called an "Amendment to Option Purchase Agreement, dated October 28, 1993," in favor of Sawmill Entertainment Corporation and Ron Rainey Management, Inc. (Gourvitz Decl., ¶2, Ex. K.)
22. The Amendment to Option Purchase Agreement granted to Sawmill Entertainment Corporation and Ron Rainey Management, Inc. "the exclusive worldwide right in perpetuity to market, merchandise, advertise, promote and sell products and services of every kind and nature embodying your name, likeness, voice, caricature, etc." (Emphasis added.) (*Id.*)

CHRIS CALLOWAY

55. Both Mrs. Calloway and plaintiff have given Cab Calloway's daughter, entertainer Chris Calloway, verbal permission to use the mark "CAB CALLOWAY," subject to plaintiff's approval, in relation to her endeavors in the entertainment industry. (Langsam Decl., ¶21.)

Date: June 8, 2001

KARLIN & KARLIN, A.P.L.C.

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Exhibit 23

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Attorneys for Defendant
Christopher Brooks

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CREATIVE ARTS BY CALLOWAY, LLC, a
Delaware limited liability company, d/b/a
C.A.B. CALLOWAY, LLC,

Plaintiff,

v.

CHRISTOPHER W. BROOKS, an individual,
d/b/a THE CAB CALLOWAY ORCHESTRA,

Defendant.

01 CIV. 3192 (BDP)

DECLARATION OF BOB BASS

I, Bob Bass, declare under penalty of perjury as follows:

1. I am the owner of Gear Ink. New Orleans ("Gear"), a corporation located at 715 Bordeaux Street, New Orleans, Louisiana 70115. I have been president and owner of Gear since March 1, 1996 when I acquired the company. All of the facts set forth below are true and based on my knowledge of Gear as well as on the books and records of the company. If required to, I could personally testify to the facts set forth herein. I am not a party to the litigation and have not been paid for my declaration or promised anything in return for providing these facts.

2. Gear manufactures and sells t-shirts featuring jazz, blues and rhythm and blues artists. Most of our designs feature vintage photographs of artists. We offer about 80 different shirt designs. One of these designs features a photograph of Cab Calloway. The artwork that appears on the shirt is shown in Exhibit R. The shirt costs \$15.95 (\$17.95 for size XXL), or \$9.00 wholesale. This is the only shirt that we offer, and that has been offered at least since 1996, that bears the name or likeness of Cab Calloway

3. Gear does not have a written agreement with Creative Arts by Calloway LLC, with Zulme Calloway or with any third party. We do not submit our shirts to anyone for approval. We do, however, pay royalties of 5% of gross sales to Zulme Calloway.

4. In 1997, Calloway Entertainment sent the letter attached as Exhibit S to Gear. The individual to whom the letter is addressed no longer was involved with the company. According to the letter, Gear entered into a license agreement with Cab Calloway sometime in 1991 giving Gear the right to use Mr. Calloway's name and likeness on t-shirts and sweatshirts. I have never seen a copy of that agreement, nor is there a copy in the records of Gear. According to the attached letter, the written agreement expired in 1993.

5. Since I acquired the company, Gear has spent no more than \$1000 on advertising merchandise featuring Cab Calloway. This advertising consisted of a single ad in *Jazz Times* magazine that ran in 2000 and a flyer that was distributed during Christmas 2000. These ads were for our entire product line, not merely the Cab Calloway shirt. In addition, Gear maintains a website at www.gearink.com. Mr. Calloway's name does not, and since at least 1996 has not, appeared on the homepage.

However, consumers can search by name for artists who appear on our shirts and can order a shirt featuring Mr. Calloway from our site.

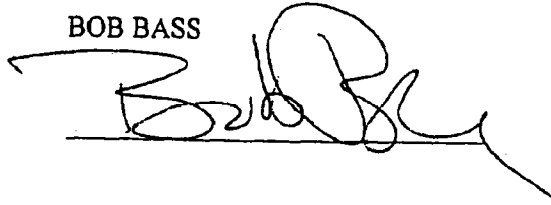
6. Sales of t-shirts bearing Mr. Calloway's likeness have been minimal. In reviewing royalty reports, I can state that since 1996, total sales of the Cab Calloway shirt amount to \$ 10,013.40.

7. Gear sells about 80 different shirts. Sales of the Cab Calloway shirt are among the lowest of all our products.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Dated this 14th day of June, 2001, New Orleans, Louisiana.

BOB BASS

A handwritten signature in black ink, appearing to read 'Bob Bass', written over a horizontal line.

I:\BSOLOMON\cwbk\Bob Bass Declaration.doc

Exhibit 24

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
WHITE PLAINS DIVISION

CREATIVE ARTS BY CALLOWAY,)
LLC, a Delaware limited liability company,)
d/b/a C.A.B. CALLOWAY, LLC,)

Plaintiff,)

v.)

CHRISTOPHER W. BROOKS, an)
individual, d/b/a THE CAB CALLOWAY)
ORCHESTRA,)

Defendant.)
_____)
)

CIVIL ACTION

FILE NO. 01 CIV. 3192 (BDP)

MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT AND IN REPLY TO
TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S APPLICATION
FOR PRELIMINARY INJUNCTION.

longer connected to it. *McCarthy*, §18:35 (4th Ed.) Plaintiff also recognizes that consumers will not likely believe that Cab Calloway (deceased since November 1994) will be personally performing with "The Cab Calloway Orchestra," as advertised by defendant.⁵

Cab Calloway's entertainment services, however, continue to be sold to the public in the form of recordings of his music and his performances. (Langsam Decl., ¶¶4-5; Langsam Aff., ¶¶14, 17, Ex. B.) Plaintiff has received royalties for Cab Calloway's entertainment services. (Langsam Decl., ¶¶18-19.) Plaintiff has also assumed the license for the sale of clothing bearing Cab Calloway's image. (Langsam Decl., ¶14.) The name "Cab Calloway" has not been used only to identify a particular individual, Cab Calloway. It has been used also, for example, on recordings to identify an entertainment service. (See, e.g., Estate of Elvis Presley, 513 F.Supp. at 1363, the names "Elvis," "Elvis in Concert," and "Elvis Presley" ruled to be associated with entertainment services of Elvis Presley.) As Cab Calloway's entertainment services continue to be offered to consumers, no evidence exists that the goodwill Cab Calloway developed in his entertainment services did not survive his death.

Defendant contends that since the aforementioned contractual and testamentary transfers did not contain the word "goodwill" they were ineffective to transfer the goodwill related to Cab Calloway's entertainment services. *Defendant's Brief*, p. 9, n.5. This is not dispositive. The form of a contract transferring a trademark does not govern the extent of the rights transferred. A contract will be held to be an assignment of a trademark if that is its actual legal effect.

⁵ See, Estate of Elvis Presley, 513 F.Supp. at 1366. "The facts (*sic*) that Elvis Presley has died and, it is undisputed that almost no one would expect to see Elvis Presley performing live with THE BIG EL SHOW does not preclude a finding of infringement." See also, Sofield Decl., ¶¶3-4.

Cairns v Franklin Mint Co., 107 F.Supp.2d at 1222. Conversely, in the instant action, plaintiff has provided both direct and circumstance evidence of the secondary meaning of the Mark.⁷

D. Plaintiff, As Well As Cab Calloway's Other Successors In Interest,
Possess Evidence of Use of the Mark.

Defendant does not dispute that Cab Calloway used the Mark to connection with his entertainment services during his lifetime. (Scotland Decl., ¶¶2-5.) Use of the Mark continued after Cab Calloway's death by Calloway Entertainment, Inc. (including its predecessors and subsidiaries) via its receipt of recording and merchandise royalties (Langsam Decl., ¶¶10-11, Ex. A; Karlin Decl., ¶5, Ex. B, Albert Deposition, vol. 1, 42:7 to 43:8; vol. 2, 331:19 to 334:17.); by Mrs. Calloway via her receipt of recording and merchandise royalties (Langsam Aff., ¶14); and now by plaintiff via its recent receipt of recording royalties (Langsam Decl., ¶¶18-19).

Defendant incorrectly states that plaintiff is claiming creation of service mark rights by the receipt of royalties. *Defendant's Brief*, p. 15. Plaintiff claims, rather, that the receipt of royalties evidences use of a mark it received by assignment from Mrs. Calloway—not the creation of a mark. *Plaintiff's Application*, p. 4-5.

Plaintiff's position is supported by Estate of Elvis Presley, 513 F.Supp. at 1365, which states:

"Thus, as long as these marks continue to be used to identify Elvis Presley entertainment services, which are still available in such forms as records,

⁷ If the Court does not find that plaintiff has produced sufficient evidence of the existence of secondary meaning of the Mark, plaintiff respectfully requests that the determination of the instant motion be continued so that plaintiff may discover and produce said evidence. See, Karlin Decl., ¶¶2-4; see also, *Fed.R.Civ.Pro.* 56(f).

CONCLUSION

This is an action to protect the common law service mark CAB CALLOWAY, created and first used by entertainer Cab Calloway over seventy (70) years ago. Plaintiff, carrying on the tradition of Cab Calloway and his other successors in interest, continues to use the Mark to identify the entertainment services of Cab Calloway. Just as the service mark *Elvis Presley* has been granted legal protection and continues to identify the goodwill and entertainment services of Elvis Presley, so too does the mark CAB CALLOWAY.

For the reasons stated herein, and in plaintiff's *Application*, plaintiff respectfully requests that this Court deny defendant's motion for summary judgment and issue the preliminary injunction requested by plaintiff.

Date: June 8, 2001

KARLIN & KARLIN, A.P.L.C.

By: 

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Attorneys for Plaintiff

Exhibit 25

02-7050

To be Argued by:
MARC A. KARLIN, ESQ.

United States Court of Appeals
for the
Second Circuit

◆ ◆

CREATIVE ARTS BY CAL, d/b/a C.A.B. Calloway, LLC,

Plaintiff-Appellant,

– against –

CHRISTOPHER W. BROOKS, d/b/a The Cab Calloway Orchestra,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR PLAINTIFF-APPELLANT

KARLIN & KARLIN
Attorneys for Plaintiff-Appellant
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"Cab Calloway never identified a business." (Def.'s Mem., p. 18) This declaration is clearly erroneous. The mark CAB CALLOWAY identified the entertainment services offered to the public by Cab Calloway during his lifetime, and now identifies those services currently offered by Plaintiff, Cab Calloway's successor.

Cab Calloway's failure to associate his name with a chain of steakhouses or to affix his name on bottles of salad dressing does not indicate, however much Defendant desires, that "Mr. Calloway used the name Cab Calloway solely to designate himself. No meaning other than a description or identification of the man ever attached to the name." (Def.'s Mem., p. 25) For this Court to agree with Defendant's proclamation it would have to ignore the evidence presented by Plaintiff and the applicable authority.

During his career of nearly seventy (70) years, Cab Calloway used his name on his recordings and compositions that were sold the public, on advertising for his public performances and recordings, as well as on motion pictures and videotapes featuring his performances. The sale of Cab Calloway's recordings, compositions and video performances continues presently, including a CD released in 1996 for sale in the United States entitled "Cab Calloway and His Orchestra, Crusin' with Cab." (A.27) Cab Calloway's successors, since his death, have received royalties from the sale of Cab Calloway's recordings, as well as from the sale of videos of his

stage and motion picture performances. (A.27; 258-261) In sum, save for personal performances, Cab Calloway's entertainment services, such as the sale of his recordings, survive his death. The mark CAB CALLOWAY is currently being used by Plaintiff, as it has been since the start of Cab Calloway's entertainment career, to identify Cab Calloway's entertainment services. (A.261)

Plaintiff does not assume or allege that Cab Calloway's fame created an "automatic" service mark in his name. Cab Calloway's long career of providing entertainment services to the public created a enforceable service mark in his name. Specifically, the name CAB CALLOWAY acquired secondary meaning through promotions and uses for nearly seventy (70) years, such as in advertising and on records, to distinguish Cab Calloway's entertainment services from other entertainment services.¹

¹ Plaintiff, by this footnote, makes reference to the citations to *Estate of Elvis Presley v. Russen*, 513 F.Supp. 1339 (D.N.J. 1981) found in its Opening Brief. For the sake of brevity, Plaintiff will not repeat in this Reply all of the New Jersey District Court's findings that are very favorable to its position in this matter.

Defendant's inference that the New Jersey District Court found a valid common law service mark in the name ELVIS PRESLEY only on the basis of the merchandise license agreements Mr. Presley entered before his death (Def.'s Mem., p. 24) is blatantly incorrect. The District Court found that Mr. Presley's entertainment services, e.g., recordings of his performances "on film videotape, audiotape, phonograph records, etc.," survived his death. *Id.* at 1363, n. 31. The District Court found that the mark ELVIS PRESLEY, among others claimed by the plaintiff in that action, "have been used for a long period of time through various

denied Plaintiff's Application for Preliminary Injunction, be reversed and this action remanded to the District Court.

Dated: Los Angeles, California
June 12, 2002

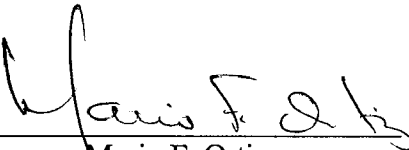
Respectfully submitted,

KARLIN & KARLIN
A PROFESSIONAL LAW CORP.

By, Marc A. Karlin
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CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the REPLY MEMORANDUM IN FURTHER SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT and the REPLY DECLARATION OF EVAN GOURVITZ IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT with Exhibits 17 -25, was served via first class mail, to Cynthia Johnson Walden, Esq., Fish & Richardson P.C., 225 Franklin Street, Boston, MA 02110-2804 attorneys for applicant Creative Arts by Calloway, LLC, on this 21st day of July 2005.



Mario F. Ortiz